



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**Docket Number USCG-2019-0211**

**RIN 1625-AA00**

**Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River, Cleveland, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a moving safety zone to provide for the safety of life on these navigable waters in the Cuyahoga River, Cleveland, OH, during the Cuyahoga 50<sup>th</sup> Parade of Lights on June 22, 2019. This temporary safety zone is necessary to protect personnel, vessels, and the marine environment from the potential hazards created by 125 vessels transiting in the river with decorative lights not normally used as navigation lights. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

**DATES:** This rule is effective from 9:15 p.m. until 11:15 p.m. on June 22, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0211 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216-937-0124, email [ryan.s.junod@uscg.mil](mailto:ryan.s.junod@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On January 30, 2019, the Lake Erie Marine Trades Association notified the Coast Guard that it will be conducting a Boat Parade from 9:30 to 11:00 p.m. on June 22, 2019, to commemorate the 50th Anniversary of the Burning River. The boat parade will begin in Cleveland Harbor west basin and proceed upriver to Merwin's Wharf where they will turn around and head back down river to Lake Erie. In response, on April 26, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River, Cleveland, OH (84 FR 17760). We stated why we proposed this rulemaking, and invited comments on our regulatory action related to this Boat Parade. During the comment period that ended May 28, 2019, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels near the boat parade.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Buffalo determined that potential

hazards associated with 125 vessels displaying decorative lights that are not used for navigation will be a safety concern for other vessels underway. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the Cuyahoga 50<sup>th</sup> Parade of Lights.

#### **IV. Discussion of Comments, Changes, and the Rule**

We received one comment on our NPRM published April 26, 2019. The comment requested information on how the rule will be enforced, and how local communities are being notified. The rule will be enforced by U.S. Coast Guard Station personnel on behalf of the Captain of the Port Buffalo, the event was published in the Local Notice to Mariners and there will be a Broadcast Notice to Mariners for notification to the public. There are no changes in the regulatory text of this temporary final rule from the proposed rule in the NPRM due to the comments.

This rule establishes a safety zone from 9:30 p.m. through 11:15 p.m. on June 22, 2019. The moving safety zone will encompass all waters within 25 feet of the vessels participating in the Cuyahoga 50<sup>th</sup> Parade of Lights in the Cuyahoga River. The safety zone will move with participating vessels as they transit from the mouth of the Cuyahoga River in the vicinity of position 41°29'59"N, 081°43'31"W, to Merwin's Wharf in the vicinity of 41°29'23"N, 081°42'16"W, and returning to the mouth of the Cuyahoga River in the vicinity of 41°29'59"N, 081°43'31"W (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on this rule not being a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone is designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will encompass all waters within 25 feet of the vessels participating in the Cleveland 50th Parade of Lights in the Cuyahoga River. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0211 to read as follows:

**§ 165.T09-0211 Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River,  
Cleveland, OH.**

(a) Location. The moving safety zone will encompass all waters within 25 feet of the vessels participating in the Cleveland 50th Parade of Lights in the Cuyahoga River. The safety zone will move with participating vessels as they transit from the mouth of the Cuyahoga River in the vicinity of position 41°29'59" N, 081°43'31" W, to Merwin's Wharf in the vicinity of 41°29'23" N, 081°42'16" W, and returning to the mouth of the Cuyahoga River in the vicinity of 41°29'59" N, 081°43'31" W (NAD 83).

(b) Effective and enforcement period. This regulation is effective and will be enforced on June 22, 2019, from 9:15 p.m. until 11:15 p.m.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or a designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who is designated by the Captain of the Port Buffalo to act on their behalf.



(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or an on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or an on-scene representative may be contacted via VHF Channel 16 or at 716-843-9525. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or their on-scene representative.

Dated: June 18, 2019.

JOSEPH S. DUFRESNE,  
Captain, U.S. Coast Guard,  
Captain of the Port Buffalo.

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